IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION CIVIL ACTION NO. 3:15-CV-153-RJC-DCK

TAMARA MUSENGE,)	
Plaintiff,)	
v.)	<u>ORDER</u>
SMARTWAY OF THE CAROLINAS, LLC, d/b/a SMARTWHEELS,)))	
Defendant.)	
)	

THIS MATTER IS BEFORE THE COURT on "Defendant's Motion To Stay The Proceedings" (Document No. 27) filed on August 18, 2016. "Plaintiff's Responsive Brief In Opposition..." (Document No. 31) was filed on September 6, 2016; and "Defendant's Reply Brief In Support..." (Document No. 32) was filed on September 8, 2016. This motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and is ripe for disposition. Having carefully considered the motion and the record, the undersigned will grant the motion.

Defendant contends that this matter should be stayed based on a pending appeal in the Court of Appeals for the District of Columbia Circuit ("TCPA Appeal") which involves the Telephone Consumer Protection Act ("TCPA"). (Document No. 27). As Defendant notes, the underlying Complaint here alleges violations of the TCPA. (Document No. 27, p.1; Document No. 1).

Defendant asserts that the TCPA Appeal is of "the FCC's July 2015 Declaratory Ruling and Order interpreting the TCPA." (Document No. 28, p.2) (citing <u>In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991</u>, Declaratory Ruling and Order, 30 FCC Rcd. 7961 (2015) (the "FCC Order"). Defendant notes that several appeals of

the FCC Order have been filed and are proceeding in the Court of Appeals of the District of Columbia Circuit, and the resolution of any one could be dispositive of the TCPA claims in this case. <u>Id.</u> (citing <u>ACA Int'l v. FCC</u>, No. 15-211) (D.C.Cir. July 10 2015). Defendant further notes

that the pending challenges are set for hearing in the D.C. Circuit on October 19, 2016. Id.

After reviewing the parties' arguments and other caselaw, and in consultation with Judge Conrad's chambers, the undersigned finds good cause for a stay of this matter. See Abplanalp v. United Collection Bureau, Inc., 3:15cv203-RJC-DKC, 2016 WL 483132 (W.D.N.C. Feb. 5, 2016).

IT IS, THEREFORE, ORDERED that "Defendant's Motion To Stay The Proceedings" (Document No. 27) is **GRANTED**. This matter is **STAYED** until otherwise ordered by this Court.

IT IS FURTHER ORDERED that the parties shall file a Joint Status Report on **December 1, 2016**, and every ninety (90) days thereafter, until the **STAY** is lifted.

SO ORDERED.

Signed: September 12, 2016

David C. Keesler

United States Magistrate Judge